



Office of the City Manager

CONSENT CALENDAR

October 10, 2006

To: Honorable Mayor and  
Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Stephen Barton, Housing Department Director

Subject: Condominium Conversion Ordinance Amendment—Modification of the Affordable  
Housing Mitigation Fee for Owner-Occupants

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code Section 21.28.065.B. to establish a sliding scale reduction in the maximum affordable housing mitigation fee for conversion of rental property to condominiums by owner-occupants.

FISCAL IMPACTS OF RECOMMENDATION

Unknown. This amendment may result in a modest increase in the number of condominium conversions, but also may reduce the fees paid.

CURRENT SITUATION AND ITS EFFECTS

On May 17, 2005 Council adopted an ordinance amendment that limited the maximum affordable housing mitigation fee for conversion of multi-family rental properties to condominiums to 12.5% of sales price. On October 25, 2005 Council adopted a set of amendments that included a maximum mitigation fee of 5% for units in two, three and four unit properties with owner-occupants who have been in place for at least seven years, and for owner-occupants in two unit properties who had seven consecutive years in the unit and as a previous Berkeley tenant. All properties where there is a unit subject to the reduced 5% maximum fee were made exempt from the 100 units per year limit on conversion of rental properties to condominiums. Properties with a total of 14 units have so far applied for conversion under this provision.

On May 16, 2006 Council held a workshop discussion of possible further amendments to the ordinance and several Council members expressed interest in the proposal to create a sliding scale reduction that would allow gradual reductions in the maximum fee for owner occupants. Council also requested an additional workshop to review the broader issues involved in condominium conversion. Since the workshop has been postponed to later this year, the Housing Advisory Commission (HAC) requested that the sliding scale reduction be brought to Council at

this time. On September 7, 2006, the HAC reviewed and unanimously approved the proposed amendment. (Commissioner Coulter recused herself).

The proposed amendment unifies the provisions for two, three and four unit properties by allowing addition of years of previous Berkeley tenancy in another unit to be added to years of owner-occupancy or tenancy in the current unit when calculating the fee reduction in three and four unit properties as well as in two-unit properties. The amendment reduces fees gradually over a ten-year period. For each qualifying year, the 12.5% maximum fee that will generally apply is reduced by 1.25%, so that after ten years of owner-occupancy and previous Berkeley tenancy there would be no mitigation fee. After two years the fee would be 10%, after four years it would be 7.5%, after six years it would be 5%, after eight years it would be 2.5% and after ten years 0%. In addition, after six qualifying years, the property would have a unit with a fee no greater than 5% and this allows the owners to apply for conversion as of right, outside of the 100 units per year limit on conversion of rental properties. This is a slight reduction from the currently required seven years.

#### RATIONALE FOR RECOMMENDATION

Unifying the criteria applied to two, three and four unit properties reduces the burden on staff that is created by having different standards for different types of properties.

The sliding scale reduction responds to concerns that people who accept difficult forms of ownership within small rental properties in order to make a long-term commitment to Berkeley have already paid a significant premium over the rental value of the property and are generally people of moderate incomes and should not pay the same fees that are levied on those who are simply doing the condominium conversion to maximize their return on investment. The ten-year period for the reduction ensures that it cannot be put to speculative use and that, in general, homebuyers will prefer to purchase units that are already condominiums rather than purchase TIC shares. It also provides an important incentive for protecting tenants who live in buildings being converted to owner-occupancy through tenancy-in-common, since most TIC buyers will want to convert to condominiums eventually.

#### ALTERNATIVES CONSIDERED

Longer and shorter sliding scale periods are possible. For example, the reduction could be set at 1.0% annually, with the result that the fee would take 12.5 years to reach zero. Also the fee structure could be left as it is.

#### CONTACT PERSON

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Attachments:

1: Ordinance amending BMC Section 21.28.065, Affordable housing fee exemptions--  
Further reduction in fee.

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 21.28.065 TO ESTABLISH A SLIDING SCALE REDUCTION IN THE MAXIMUM AFFORDABLE HOUSING MITIGATION FEE FOR CONVERSION OF RENTAL PROPERTY TO CONDOMINIUMS BY OWNER-OCCUPANTS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 21.28.065 is amended to read as follows:

**Section 21.28.065 Affordable housing fee exemptions--Further reduction in fee.**

A. Exemptions. The following shall be exempt from the payment of any affordable housing fee:

1. Any already existing inclusionary unit which was required to be created under the City's inclusionary zoning ordinance.

2. In properties where the initial request for selection was made prior to June 16, 2005 and the property would have been exempt from the affordable housing mitigation fee under the ordinance then in effect, the property shall continue to be exempt from this fee as long as the subdivision application is complete by July 1, 2007.

3. Residents who are owners as tenants in common of buildings containing five or fewer dwelling units as of May 10, 2005, shall be exempt from the affordable housing mitigation fee required by this section, as well as the quota set forth in Section 21.28.090, provided that such resident owners have used the unit as their principle place of residence since January 1, 1995, provided that no more than 15 dwelling units may be subject to this exemption on a first come, first-served basis. This provision shall sunset on July 1, 2007 or once 15 units have received a fee waiver, whichever comes first.

B. Further Reductions in Affordable Housing Fee. There will be further reductions in the affordable housing fee as follows:

1. If the owner converting the property agrees to limit future rent increases for current tenants to no more than 65% of the increase in the Consumer Price Index for all Bay Area Consumers after conversion, then the affordable housing fee shall not exceed 12.5% of the sales price of the unit.

2. In two, three and four unit properties the maximum affordable housing fee for any unit shall be reduced by one and one-quarter percent (1.25%) for each year that ~~where~~ an owner has lived in the unit or previously rented another unit in Berkeley as their principal place of residence ~~for a total of at least seven consecutive years the affordable housing fee for that unit shall be no greater than five percent of sales price.~~

3. ~~In any conversion of owner-occupied properties consisting of three or four residential units the maximum affordable housing fee for units occupied by an owner who has lived in the unit as their principal place of residence for at least seven consecutive years shall be five percent.~~

~~4.~~ In two unit owner-occupied properties with a rental unit that is exempt from both rent stabilization and good cause for eviction the maximum fee on either unit shall be five percent. (Ord. 6918-NS § 1, 2006; Ord. 6882-NS § 1 (part), 2005)

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.